

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: JOSEPH C. HURLBURT
Serial No.: 10/729,896 Art Unit: 3681
Filed: December 8, 2003 Examiner: Saul J. Rodriquez
For: TRAILER HAVING TILT AND DUMP FUNCTIONS

Commissioner for Patents
Mail Stop PETITION
P. O. Box 1450
Alexandria, VA 22313-1450

S I R:

PETITION TO REVIVE AN ABANDONED APPLICATION UNDER 37 C.F.R. 137(a)

On February 26, 2008, a Notice of Abandonment was mailed to the undersigned attorney and received thereby in a timely manner. This Notice of Abandonment identifies the reason for abandonment as the failure to receive a proper response to the Final Office Action within the shortened statutory period. The date of the Final Office Action was January 12, 2006; however, since that Final Office Action further prosecution has taken place, including a Non-Final Office Action dated January 30, 2007, and a response thereto dated April 26, 2007. In fact, the Examiner approved the application following the April 26, 2007 Amendment and forwarded the application for allowance. The Notice of Allowance was never mailed and never received by the undersigned attorney.

Applicant respectfully submits that prosecution continued after the Final Office Action because the SPE, Eileen Ellis, informed Applicant's attorney that the Final Office Action was going to be withdrawn and the file returned to the examiner for a new office action to be submitted. Both the examiner and Applicant's attorney apparently had the same understanding that prosecution was continuing because prosecution did, in fact, continue. Accordingly, Applicant respectfully submits that the abandonment of the instant application was unavoidable.

Applicant is submitting herewith the fee of \$255.00 for the submission of this Petition to Revive Under 37 C.F.R. Section 137(a).

Applicant is required to submit the required reply, unless previously filed. As set forth in the MPEP Section 711.03(c)(II)(A)(2)(b), the Reply required for consideration of a Petition to Revive where Abandonment is for Failure to Reply to a Final Action, Applicant is required to submit a Notice of Appeal, an Amendment that *prima facie* places the application in condition for allowance, an RCE or the filing of a continuing application. In response to this requirement, Applicant respectfully submits that the Amendment After Final dated in the file history as April 12, 2006, with a Supplemental Amendment filed April 13, 2006, and an Amendment After Non-Final Rejection dated in the file history as April 26, 2007, have already been filed and made of record. These Amendments have already been deemed to place the claims in condition for allowance. Therefore, Applicant respectfully submits that these aforementioned Amendments provide a *prima facie* allowance of the application. Applicant respectfully submits that the April 26, 2007 Amendment places the claims in condition for allowance. Accordingly, Applicant believes that no further reply need be submitted with this Petition.

Since this reissue utility application was filed after May 29, 2000, Applicant respectfully submits that a terminal disclaimer is not required.

If the Director requires any further information or documentation, the Director is requested to contact the undersigned attorney.

Favorable consideration of this Petition is courteously solicited. Applicant requests that his application be revived, that the Amendments of record dated April 12, 2006; April 13, 2006; and April 26, 2007, be entered, that the application be passed to allowance, and that a Notice of Allowance be mailed to the undersigned attorney so that the Issue Fee can be paid.

Respectfully submitted,



Date: September 5, 2008

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